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Mie Takahashi

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5291

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EXAMINER

COUNTS, GARY W

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Attachment to Advisory Action

Continuation of 11 NOTE: Applicant argues that the purpose of the line of arguments in the previous response was to demonstrate the distinctions between the surfactants of the present invention, and the surfactants of Chu, i.e. to demonstrate that surfactants cannot be considered equivalent, merely because they belong to the large group of compounds called surfactants. This is not found persuasive because of reasons of record and further because not only are the surface active agents of Chu and Nanbu and Uenoyama considered surfactants but also because these surfactants come from the same family of surfactants considered to be non-ionic surfactants. As stated in the Office Action of December 10, 2007 Chu teaches that polyoxyethylene (23), polyoxyethylene sorbitan monolaurate and polyoxyethylene sorbitan monooleate are non-ionic surfactants which can be used in the analytical device and the method of making the device, and both Nanbu et al and Uenoyama et al teach that sucrose monolaurate (non-ionic surfactant) is an equivalent reagent to those disclosed by Chu. Thus, the surfactants that are considered equivalent are obtained from the same family of surfactants (non-ionic surfactants). Thus, one of ordinary skill in the art would have a reasonable expectation of success incorporating surfactants such as taught by Nanbu and Uenoyama into the method of Chu.

Applicant states that the melting point of polyoxyethylene sorbitan monooleate is -25 degrees C and that since the melting point is -25 degrees C this material is in liquid form at normal temperature and normal pressure and similarly that the melting point of polyoxyethylene sorbitan monolaurate is -14 degrees C and thus, polyoxyethylene

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sorbitan monolaurate is also in liquid form at normal temperature and normal pressure. Applicant states that the melting point of sucrose monolaurate is 150 degrees C and thus is in solid form at normal temperature and normal pressure and that the melting point of n-octyl-B-D-thioglucoiside is 127 degrees C and this is in solid form at normal temperature and normal pressure. These statements and arguments are not found persuasive because (1) it is noted for example that claim 5 does not require the medium to be in dry form but merely states that that surface active agent is solidified when dried and (2) the applicant is arguing the references individually and in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The combination of references teach the same surface active agents and the same drying process as claimed by the applicant and therefore the combination of references read on the claims and would also ensure long-term preservation stability and increasing preservation circumstance freedom.

Applicant states that as discussed in detail in the response filed November 6, 2007, Nanbu et al and Uenoyama et al have no common point with the present invention, other than surface active agent and thus it is natural that neither of these references would discuss preservation stability. Applicant states that Nanbu et al and Uenoyama et al merely recite large groups of surfactants, some of which fall within Applicants' recited surface active agents and many of which do not. Thus, these

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secondary references cannot be seen as directing one of skill in the art to employ the particular surface active agents, recited in applicants' claims which result in the advantages discussed previously. These statements and arguments are not found persuasive because as stated above the surfactants of Nanbu et al and Uenoyama et al also fall within the same family as taught by Chu et al and therefore one of ordinary skill in the art would expect the surfactants of Nanbu et al and Uenoyama et al to have distinct properties which allow for the surfactants of Nanbu et al and Uenoyama et al to work in the method of Chu. Further, with respect to the advantages as argued by Applicant, it is noted that previous office actions stated that the surfactants provided improved sensitivity in assays (which is noted to be one of the same advantages disclosed in the current application on page 10). Further, as stated above the combination of references teach the same surface active agents and the same drying process as claimed by the applicant and therefore the combination of references read on the claims and would also ensure long-term preservation stability and increasing preservation circumstance freedom.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARY W. COUNTS whose telephone number is (571)272-0817. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Shibuya can be reached on (571) 272-0806. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/ Gary W. Counts/
Examiner, Art Unit 1641

/Long V Le/
Supervisory Patent Examiner, Art Unit 1641